

# EXHIBIT 5

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE MIDDLE DISTRICT OF TENNESSEE  
3                   NASHVILLE DIVISION

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4                   DAN McCaleb, Executive Editor  
5                   of THE CENTER SQUARE,

6                   Plaintiff,  
7                   vs.  
8                   MICHELLE LONG, in her  
9                   official capacity as  
10                   DIRECTOR of the TENNESSEE  
11                   ADMINISTRATIVE OFFICE OF  
12                   THE COURTS,

13                   Case No. 3:22-cv-00439

14                   Judge Richardson  
15                   Magistrate Judge  
16                   Frensley

17                   Defendant.

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18                   Videoconference Deposition of:

19                   DAN McCaleb

20                   Taken on behalf of the Defendants  
21                   October 13, 2023

22                   Commencing at 11:57 a.m.

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23                   Deborah H. Honeycutt, LCR, Associate Reporter  
24                   Lexitas Legal TENNESSEE  
25                   1015 Avery Park Circle  
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# A P P E A R A N C E S

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Also present:

MS. BRIDGET CONLAN, Liberty Justice Center

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2       S   T    I    P    U    L    A    T    I    O    N    S  
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4                 The videoconference deposition of  
5 DAN McCaleb was taken by counsel for the  
6 Defendants, by Notice, with all participants  
7 appearing at their respective locations, on  
8 October 13, 2023, for all purposes under the  
9 Tennessee Rules of Civil Procedure.

10               All objections, except as to the form of  
11 the question, are reserved to the hearing, and said  
12 deposition may be read and used in evidence in said  
13 cause of action in any trial thereon or any  
14 proceeding herein.

15               It is agreed that Deborah H. Honeycutt,  
16 Notary Public and Licensed Court Reporter for the  
17 State of Tennessee, may swear the witness remotely,  
18 and that the reading and signing of the completed  
19 deposition by the witness is waived.

\* \* \*

THE REPORTER: Good morning. My name is Deborah Honeycutt. I am a stenographic reporter with Lexitas Legal TENNESSEE. My license number is 472.

Today's date is October 13, 2023, and the time is approximately 11:57 a.m. Central time.

This is the deposition of Dan McCaleb in the matter of Dan McCaleb, Executive Editor of The Center Square vs. Michelle Long, in her official capacity as Director of the Tennessee Administrative Office of the Courts, filed in the District Court for the Middle District of Tennessee, Nashville Division. The Case Number is 3:22-cv-00439.

This deposition is being taken by videoconference, and the oath will be administered remotely by me. Any digital exhibits marked during this deposition will be deemed as "original" for purposes of said deposition.

At this time, I will ask counsel to identify yourselves and state whom you represent. If you have any objections with the procedures I've outlined, please state so when you introduce yourself. We will start with the noticing attorney.

MR. STAHL: Michael Stahl, representing Michelle Long, the defendant.

MR. DOUGHERTY: Buck Dougherty representing the plaintiff, Dan McCaleb. And just one objection for the record. I don't recall this being noticed as a video-recorded deposition which I believe is required under the Rules. We're going to reserve the right to raise that if it's to be recorded, but I just want to get that for the record.

THE REPORTER: I am recording that for my purposes only, Mr. Dougherty.

MR. DOUGHERTY: Thank you.

MR. MCQUAID: And James McQuaid also for Plaintiff, Dan McCaleb.

\* \* \*

DAN McCARTER

was called as a witness, and after having been duly sworn, testified as follows:

## EXAMINATION

QUESTIONS BY MR STAHL:

Q. Okay. Mr. McCaleb, we'll begin. Can you state your name for the record.

1 A. Dan McCaleb.

2 Q. And you understand that you're under oath  
3 today, sir, right?

4 A. I do, yes.

5 Q. And are you represented by counsel?

6 A. I am.

7 Q. And who is that?

8 A. Liberty Justice Center, Buck Dougherty,  
9 Mr. Buck Dougherty, lead counsel.

10 Q. Okay. Thank you. Have you ever given a  
11 deposition or provided testimony in a court case  
12 before?

13 A. I gave one deposition many, many years ago,  
14 18 or 19 years ago.

15 Q. What was that case? Do you remember?

16 A. The case name or number I don't remember. I  
17 remember some very few details but no.

18 Q. Well, let me just go over some procedures so  
19 that we are on the same page since it's been a  
20 while. The first is that if you can't hear me or  
21 you don't understand a question please let me know.  
22 It's really important that you understand the  
23 questions that I'm asking before you give your  
24 answer. So if that comes up, if there's technology  
25 issues because we're remote or whatever, just feel

1 free to let me know, please. If you don't  
2 understand something or need clarification, I can  
3 definitely help you with that. It's best if you let  
4 me finish my question before you start to give your  
5 answer for a couple of reasons. One, so that you  
6 know the question that I'm asking and then, two, so  
7 that the court reporter can be sure to get down what  
8 everyone is saying because if people start talking  
9 over each other, the transcript just gets a little  
10 bit messy.

11 In that vein, it's also important that you  
12 give verbal responses. So sometimes during  
13 depositions people will shake their heads or give  
14 uh-huh or huh-uh answers. And, again, that's hard  
15 for the transcript to reflect. So please do your  
16 best to give verbal responses.

17 If you need a break, that's perfectly fine.  
18 Just let me know. We can take a break. I don't  
19 think this will take all that long, but if at any  
20 time you feel like you need a break, that's  
21 perfectly fine. You can let me know or let your  
22 attorney know. The only thing that I ask is that if  
23 I have asked you a question already, that you answer  
24 that question before we go on break. Does that  
25 sound good?

1 A. Yes.

2 Q. Great. As far as your mental condition  
3 today, is there reason why you believe you can't  
4 give full and complete answers?

5 A. No.

6 Q. Are you under any medication or substances  
7 that would impair your ability to give honest  
8 testimony?

9 A. No.

10 Q. Have you talked with anyone in preparation  
11 for today's deposition?

12 A. My attorney.

13 Q. Anyone else?

14 A. No.

15 Q. Have you reviewed anything in preparation for  
16 today's deposition?

17 A. I have reviewed some of our filings, our  
18 amended lawsuit, and my declarations.

19 Q. And Buck mentioned before we went on the  
20 record that you didn't have anything with you today  
21 but I'll just ask again for the transcript. Did you  
22 bring anything with you today?

23 A. I brought printouts of what I just mentioned  
24 but I don't have them on me here, no.

25 Q. Okay. Let's just go through some

1 biographical information. What's your address?

2 A. My personal address is 726 Windsor Drive,  
3 Crystal Lake, Illinois.

4 Q. So you're a resident of Illinois then?

5 A. Yes.

6 Q. Do you have any other addresses in any other  
7 states?

8 A. No.

9 Q. Are you a resident of any other state?

10 A. No.

11 Q. What is your occupation?

12 A. Journalist.

13 Q. How long have you been doing that?

14 A. More than 30 years.

15 Q. Are you an independent journalist, or do you  
16 work for someone?

17 A. I work for The Center Square.

18 Q. Okay. And how long have you worked for them?

19 A. Since 2017, although we weren't known as The  
20 Center Square in 2017.

21 Q. What were you known as in 2017?

22 A. Illinois News Network.

23 Q. And when you say that you're now known as The  
24 Center Square, was that because you changed your  
25 business license or just the name or what

1 precipitated the change from the Illinois News  
2 Network to Center Square?

3 A. Well, in 2017 when I joined, we were covering  
4 just Illinois only. And then we expanded our  
5 coverage to across the country and Illinois News  
6 Network didn't work for Tennessee or Pennsylvania,  
7 for example.

8 Q. Okay. Before you worked for Illinois News  
9 Network, where did you work?

10 A. I worked for Shaw Media.

11 Q. Was that also in Tennessee -- or in Illinois?

12 A. Yes, Illinois. I was in Illinois. Illinois  
13 and Iowa, yes.

14 Q. All right. Do you know why we are here  
15 today?

16 A. Yes.

17 Q. What is your understanding of why we're here  
18 today?

19 A. I am giving a deposition in a lawsuit against  
20 Defendant Michelle Long.

21 Q. And what is the purpose of that lawsuit?

22 A. To open up the Bench Bar Advisory Commission  
23 in Tennessee to public scrutiny, essentially.

24 Q. When you say public scrutiny, are you  
25 limiting that to press or is it your understanding

1 that this lawsuit would apply to the entirety of the  
2 public?

3 A. The press and the public.

4 Q. Okay. The caption in the lawsuit says that  
5 you are the plaintiff as executive editor of The  
6 Center Square. So is it your understanding that you  
7 are filing this suit as a private citizen or as a  
8 member of the press?

9 A. As a member of the press.

10 Q. Have you reviewed all the pleadings in this  
11 case?

12 A. Yes.

13 Q. Do you agree with everything that's been  
14 filed on your behalf?

15 A. Yes.

16 Q. Why did you initiate this lawsuit?

17 A. As a 30-plus-year journalist I believe in  
18 open government. When I learned that this was  
19 closed, I asked the question, what are they hiding,  
20 as I would in any situation. So I looked into it  
21 further and thought it was appropriate to get the  
22 meetings open.

23 Q. When you say you learned that they were  
24 closed, how did you learn that they were closed?

25 A. I think my first information about it had to

1 do with Ms. Long's statement or a policy position  
2 that she put out that had to do with concerns about  
3 safety and security and closing -- was it the  
4 Tennessee Judicial Conference? I started looking  
5 into it after that.

6 Q. So you believe that you saw a policy from  
7 Michelle Long that indicated that the Tennessee  
8 Rules Advisory Commission on Practice and Procedure  
9 were closed to the public?

10 MR. DOUGHERTY: Object to the form of  
11 the question.

12 BY MR. STAHL:

13 Q. You can answer.

14 A. Okay. No. No. Initially it was the  
15 Tennessee Judicial Conference, I think is what the  
16 name of it is. I think it came from Michelle Long,  
17 yes.

18 Q. But that was a policy that you saw that  
19 indicated that the Judicial Conference was closed to  
20 members of the public?

21 A. I don't know if you'd call it a policy or a  
22 rule or whatever but the Judicial Conference was  
23 closed.

24 Q. Well, what would you call it?

25 A. I guess if they're acting on the policy, I'd

1 call it a rule that was put in place.

2 Q. And where did you see this rule?

3 A. On the Tennessee judicial website,

4 tncourts.gov, I believe it is.

5 Q. When was the last time you saw this policy?

6 Or the rule?

7 A. When I reviewed my filings, I believe.

8 Q. When did you review those filings?

9 A. Over the course of this week.

10 Q. So within the past week you saw a policy or a  
11 rule on the Tennessee Judicial website from Michelle  
12 Long that said the Tennessee Judicial Conference was  
13 closed to members of the public?

14 MR. DOUGHERTY: Object to the form of  
15 the question.

16 THE WITNESS: I have reviewed a lot of  
17 documents in the past week, so I guess I can't state  
18 specifically. I definitely read something related  
19 to concerns over security and safety for members of  
20 the Tennessee Judicial Conference.

21 BY MR. STAHL:

22 Q. Was this lawsuit filed in the last week?

23 A. No.

24 Q. Do you remember when you filed this lawsuit?

25 A. June of 2022.

1 Q. Okay. So what caused you to believe prior to  
2 June of 2022 that the Tennessee Commission on the  
3 Rules of Practice and Procedure were closed to the  
4 public?

5 MR. DOUGHERTY: Object to the form of  
6 the question.

7 THE WITNESS: I want to say it started  
8 with that, with -- with -- I'm sorry -- with the --  
9 the policy or the rule from Ms. Long.

10 BY MR. STAHL:

11 Q. So, just to be clear, prior to June of 2022,  
12 you saw a policy or a rule on the Tennessee Judicial  
13 website from Ms. Long saying that the Tennessee  
14 Judicial Commission was closed to the public and you  
15 assumed that the Tennessee Rules of Practice and  
16 Procedure Commission was also closed to the public?

17 A. No, I did not assume that.

18 Q. So what made you file this lawsuit to open  
19 the meetings of the Tennessee Advisory Commission on  
20 the Rules of Practice and Procedure?

21 A. I started looking into it further and one of  
22 the things I recall saying is that this, semantics,  
23 you call it the Advisory Commission, Bench Bar  
24 Committee, that they were supposed to meet  
25 periodically. But I did not -- I couldn't find

1 anywhere on this judicial website any advisories of  
2 any meetings and so that drew more suspicion from  
3 me.

4 Q. Okay. So you said you looked into it further  
5 and you said that you didn't see any notices  
6 indicating that the Commission meetings were open to  
7 the public; is that right?

8 A. Correct. Or -- yes, correct. But if memory  
9 serves, I didn't even see any -- not just open to  
10 the public, but any schedules of meetings.

11 Q. Okay. And why does the lack of scheduled  
12 meetings indicate that meetings aren't open to the  
13 public?

14 A. Well, experience in 30 years of journalism.  
15 I have gone to a lot of government websites. I have  
16 attended a lot of government meetings. And if  
17 meetings are open to the public, there's generally  
18 supposed to be public notice.

19 Q. So you say generally. Does that mean there  
20 are instances when that's not the case?

21 A. The public meetings I think there needs to be  
22 public notice.

23 Q. So when there wasn't public notice that you  
24 could find about the Tennessee Commission on the  
25 Rules of Practice and Procedure, did you do anything

1 else to confirm that those meetings weren't open to  
2 the public?

3 A. Did I do anything else? I kept looking, kept  
4 digging, I think, kept investigating. In terms of  
5 specifics, I don't recall exactly what I did.

6 Q. Well, that's difficult for me to understand  
7 that you think you did stuff but you can't tell me  
8 what you did. So I've got to keep asking some  
9 questions about that. So you said you kept digging.

10 What did that mean?

11 MR. DOUGHERTY: Object to the form of  
12 the question.

13 THE WITNESS: I kept searching this  
14 particular website, and I think I went to the State  
15 of Tennessee's website, and I just kept looking,  
16 what's going on. I had the question what's going on  
17 here? Why are these meetings not -- why is there  
18 not public notices for these meetings? That's,  
19 essentially, it.

20 Q. Okay. So when you didn't see the public  
21 notice for the meetings, you continued to look for  
22 the public notice meetings on that website you  
23 visited and other state websites; is that fair?

24 A. Yes. Actually, I looked at the federal  
25 judiciary website and I noticed something very

1 similar to the Tennessee Bench Bar Committee and  
2 noticed that they were open as well. Or that they  
3 were open, excuse me, not as well.

4 Q. Okay. So after not finding a public notice  
5 for the Tennessee Advisory Rule Commission meetings,  
6 did you do anything else to confirm whether those  
7 meetings were open to the public?

8 A. I think I have answered the question. I kept  
9 looking. But yes, that was the end of it.

10 Q. Okay. Well, thinking you answer my question  
11 and answering my questions sometimes is different  
12 for different people. So I'm trying to get some  
13 good clarity on this.

14 You looked online for public notices of the  
15 Tennessee Advisory Commission meetings in multiple  
16 places; you couldn't find the meeting notices; and  
17 so you filed suit; is that right?

18 A. Yes, eventually.

19 Q. Did you ever call anyone and ask them, either  
20 in the state government or the Tennessee judiciary,  
21 about the public notice or lack thereof?

22 MR. DOUGHERTY: Object to the form of  
23 the question.

24 THE WITNESS: Can you repeat it?

25 / /

1 BY MR. STAHL:

2 Q. Did you ever call anyone in the Tennessee  
3 state government or the Tennessee judiciary to ask  
4 or confirm why you couldn't find a public notice for  
5 the Tennessee Commission meetings on Rules of  
6 Practice and Procedure?

7 A. Not that I recall, no.

8 Q. Did you email anyone asking that same  
9 question?

10 A. Within Tennessee state government, not that I  
11 recall, no.

12 Q. Have you ever been a named plaintiff before?

13 A. No.

14 Q. Have you ever been a named defendant before?

15 A. No.

16 Q. Your pleadings in this case indicate that you  
17 are the executive editor at The Center Square  
18 organization; is that right?

19 A. Yes.

20 Q. I think The Center Square website has you  
21 listed as vice president of news and content,  
22 though. Can you explain that discrepancy?

23 A. I am vice president of news and content for  
24 the Franklin News Foundation, which is the 501(c)(3)  
25 non-profit that publishes The Center Square, and

1 other things.

2 Q. So are you still an executive editor at  
3 Center Square?

4 A. Yes.

5 Q. And what does it mean to be an executive  
6 editor at The Center Square?

7 A. I am the top editor. I make final decisions  
8 on editorial judgment issues.

9 Q. Do you have a particular area that you work  
10 within for The Center Square in doing your editorial  
11 comments, meaning sports, politics, anything like  
12 that, or is it just general editorial purview?

13 A. We're focused on government news.

14 Q. Okay. How many employees are there at The  
15 Center Square?

16 A. I think we are at about 27 or 28 right now.

17 Q. Okay. And is that organization online only,  
18 or do they have a print or video arm?

19 A. We -- we do do some video. We are print  
20 only -- or, excuse me -- online only. We do not  
21 have a print arm.

22 Q. And you said that The Center Square was born  
23 out of the Illinois News Network in 2017; is that  
24 right?

25 A. I joined Illinois News Network in 2017. We

1 launched The Center Square in 2019.

2 Q. And was The Center Square a completely  
3 separate organization when you launched it or was it  
4 the same as the Illinois News Network under just a  
5 new name?

6 A. We folded Illinois News Network into The  
7 Center Square.

8 Q. Who hired you to The Center Square?

9 A. It's the same person who hired me to Illinois  
10 News Network. Chris Krug.

11 Q. And who is he? Is he the founder of The  
12 Center Square?

13 A. He is the president of the Franklin News  
14 Foundation which publishes The Center Square.

15 Q. Is The Center Square registered as a business  
16 in Tennessee?

17 A. I honestly don't know the answer to that  
18 question. Well, I think we have tax status. I  
19 think that's the best I can say.

20 Q. And what is the organizational structure  
21 between The Center Square and Franklin News?

22 A. The organizational structure, Franklin News  
23 is the 501(c)(3) nonprofit that publishes The Center  
24 Square. I do report up to the president of the  
25 Franklin News Foundation. We also have other

1 separate websites that some of which that I'm  
2 directly involved in, that also go up to the  
3 Franklin News Foundation.

4 Q. Is the president of the Franklin News  
5 Foundation Chris Krug?

6 A. Correct, yes.

7 Q. Okay. To the best of your knowledge, is  
8 Franklin News registered as a business in Tennessee?

9 A. I don't know.

10 Q. Do you have the ability to hire and fire  
11 people as executive editor of The Center Square?

12 A. Yes.

13 Q. Do you decide what gets reported on?

14 A. Ultimately, if there is question about it,  
15 yes. But I don't get involved in every single daily  
16 news coverage decision.

17 Q. So maybe you can walk me through. How does a  
18 news article get published on The Center Square? Is  
19 it assigned by you to a reporter? Does someone come  
20 to you with an idea? How does that the process  
21 work?

22 A. It's a combination.

23 Q. A combination of what?

24 A. A combination of me or other editors  
25 assigning stories to reporters or reporters going up

1 to editors saying I think we should cover this  
2 today. We have a daily ongoing what we call a news  
3 budget. Not a financial budget. A news budget.  
4 Here's the stories that we can work on and we have  
5 daily meetings to discuss the options.

6 Q. And do you give final approval on what gets  
7 approved for a story, meaning, what gets funded to  
8 investigate that story, or do you only give final  
9 approval for what gets printed on the website? How  
10 does that work?

11 A. We have 27, 28 staff on The Center Square.  
12 We publish, I don't know, anywhere in the  
13 neighborhood of 70 stories a day. I don't give  
14 final approval on every single story. More  
15 controversial stories, I might. If something comes  
16 to my attention, I'll say we need to go get that,  
17 but I do not give final approval on every single  
18 story. No, I couldn't possibly.

19 Q. Do you assign stories to reporters?

20 A. Yes.

21 Q. Did you assign anyone or have you ever  
22 assigned anyone to do a story or an article on the  
23 Tennessee Commission on the Rules of Practice and  
24 Procedure?

25 A. Not directly assign. I made staff aware of

1 the lawsuit.

2 Q. Can you explain to me what you mean when you  
3 say you made them aware of the lawsuit?

4 A. I let staff know that we -- not me  
5 personally -- as the executive of The Center Square,  
6 we're filing a lawsuit.

7 Q. Prior to filing the lawsuit, had you ever  
8 edited or wrote an article about the Tennessee  
9 Commission on Rules of Practice and Procedure?

10 A. Me personally, no.

11 Q. Had you ever prior to the lawsuit assigned  
12 anyone to write an article or cover a story in some  
13 way about the Tennessee Commission on Rules of  
14 Practice and Procedure?

15 A. No.

16 Q. Have you written about this case online or  
17 anywhere in print?

18 A. Me personally?

19 Q. Yes.

20 A. No.

21 Q. Have you commented about this case in any  
22 video or audio platform?

23 A. No.

24 Q. Have you written any articles regarding  
25 public access under the First Amendment?

1 A. Public access in general? Not specific to  
2 this case, I guess is what I'm asking?

3 Q. That's right.

4 A. Yes. I'm sure I have, plenty of times.

5 Q. Can you think of any of them?

6 A. Can I have a second or a moment to consider?  
7 Can you repeat the question first so I know what I'm  
8 considering?

9 Q. I am trying to figure out if you've ever  
10 written about the First Amendment's right to public  
11 access in any online forum or print forum or  
12 anything like that in general?

13 A. I'm sure I have. I would have to get back to  
14 you on that, though. In the moment nothing is  
15 immediately coming to mind.

16 Q. Okay. If the Advisory Commission on the  
17 Rules of Practice and Procedure in Tennessee were  
18 open to the public, would you attend those?

19 A. Me personally, no.

20 Q. Yes.

21 A. No. Me personally, I would not attend them  
22 in person. I'm in Chicago or the Chicago suburb.  
23 I'm in Illinois. I would not come attend them in  
24 person. I would certainly at least initially  
25 observe them if they were available via Zoom or a

1 Zoom-like platform.

2 Q. So would you be satisfied with an electronic  
3 recording of the videos in terms of public access?

4 MR. DOUGHERTY: Object to the form of  
5 the question.

6 THE WITNESS: No.

7 BY MR. STAHL:

8 Q. So you wouldn't attend them but you would  
9 expect them to be electronically recorded?

10 MR. DOUGHERTY: Object to the form of  
11 the question.

12 THE WITNESS: Live webcast, plus open to  
13 in-person observation.

14 BY MR. STAHL:

15 Q. So you say recorded.

16 A. I'm a little confused by when you use the  
17 term "recorded".

18 Q. What about the term "recording" is confusing  
19 you?

20 A. Well, you can live webcast a hearing and then  
21 put up a recording of the live webcast of the  
22 hearing at some point after the fact, or you can not  
23 live webcast it and then you can just put up a  
24 recording of it at some point after the fact. So I  
25 just want to differentiate between the two. Live

1 webcast is a term I'm using for actually seeing it  
2 as it's going on.

3 Q. Okay. So you have no intention of ever  
4 physically attending a Tennessee Commission meeting  
5 on the Rules of Practice and Procedure?

6 A. Me personally?

7 Q. Yes.

8 A. No immediate intention, no. I might happen  
9 to find myself needing to.

10 Q. Would you expect to send someone to cover  
11 those meetings if they were open to the public?

12 MR. DOUGHERTY: Object to the form of  
13 the question.

14 THE WITNESS: Can you repeat the  
15 question?

16 BY MR. STAHL:

17 Q. If the meetings were open to the public,  
18 would you as executive editor of The Center Square  
19 expect to send a reporter or someone on behalf of  
20 The Center Square to observe those meetings in  
21 person?

22 A. That's very possible, yes.

23 Q. Have you ever tried to do that before?

24 A. Specific to this case? No.

25 Q. Okay. Not specific to this case, but in your

1 time as editor of any organization, your 30 years of  
2 journalism as you put it, have you ever assigned  
3 anyone to attend the Tennessee Commission on Rules  
4 of Practice and Procedure in person?

5 A. Not that I recall.

6 Q. And, to be clear, you've never written  
7 anything about the Tennessee Rules of Practice and  
8 Procedure in your time as a journalist?

9 A. Me personally?

10 Q. Yes.

11 A. No.

12 Q. Do you host or contribute regularly to any  
13 podcasts?

14 A. Yes.

15 Q. What podcast is that?

16 A. I'm on four podcasts.

17 Q. Okay. What are those?

18 A. America in Focus. Illinois in Focus.  
19 Wisconsin in Focus. And Education in Focus.

20 Q. Have you ever discussed the Tennessee  
21 Advisory Commission on Rules of Practice and  
22 Procedure in any of those podcasts?

23 A. No.

24 Q. What is heartlandernews.com?

25 A. I don't know.

1 Q. When you decided to file suit in this case,  
2 did you need anyone's permission to do that as  
3 executive editor of The Center Square?

4 MR. DOUGHERTY: Object to the form of  
5 the question.

6 THE WITNESS: No. I alerted my  
7 publisher that we were going to do it, just for  
8 communication sake.

9 BY MR. STAHL:

10 Q. When you say --

11 A. Not permission.

12 Q. -- your publisher, do you mean Chris Krug?

13 A. Yes.

14 Q. So you never spoke to him about the case  
15 prior to deciding to file?

16 A. I don't recall.

17 Q. Have you ever been to Tennessee, Mr. McCaleb?

18 A. Yes.

19 Q. And what did you come to Tennessee for?

20 A. The last time I was in Tennessee was actually  
21 for a First Amendment conference.

22 Q. When was that?

23 A. 2017 or 2018.

24 Q. Have you ever attempted to attend any other  
25 Tennessee State Commission meetings other than the

1 Tennessee Commission on Rules of Practice and  
2 Procedure?

3 A. Me personally?

4 Q. Yes.

5 A. No.

6 Q. Have you ever sent any reporters on your  
7 behalf as an editor, either at The Center Square or  
8 as an editor at another journalistic platform, to  
9 Tennessee State Commission meetings other than the  
10 Tennessee meeting on Rules of Practice and  
11 Procedure?

12 A. So I got the first part. Tennessee  
13 Commission meetings or like any kind of Tennessee  
14 meetings, like legislative meetings, or be specific.  
15 Are you talking about the judiciary?

16 Q. I'm talking about Tennessee State Commission  
17 meetings, so any commission representing the State  
18 of Tennessee in any capacity.

19 A. I guess I'm a little confused by what you  
20 mean by commission. Would that include  
21 legislative-type of meetings or like committees of  
22 legislature, et cetera? I'm just trying to get a  
23 better understanding of what you're asking.

24 Q. Sure. No. I can appreciate that. Well, let  
25 me ask you this.

1                   Are you aware of how many commissions there  
2 are in Tennessee under the Tennessee Supreme Court?

3   A.    I know I have seen a number. I want to say  
4 it was between 15 and 20.

5   Q.    Okay. So limiting my question to those 15 to  
6 20 committees, have you sent anyone on your behalf  
7 or as an editor either at The Center Square or any  
8 other organization that you've ever worked for as a  
9 journalist to any of those other commission meetings  
10 except the Tennessee Commission on Rules of Practice  
11 and Procedure?

12   A.    No. It wasn't until I realized that these  
13 meetings were closed that it piqued my curiosity.

14   Q.    What piqued your curiosity?

15   A.    When government tries to close meetings,  
16 from my 30-plus years of experience, it piques my  
17 curiosity. What are they trying to hide, I ask  
18 myself.

19   Q.    So any time that you learn of a government  
20 meeting that's not open to the public you file suit?

21                   MR. DOUGHERTY: Object to the form of  
22 the question.

23                   THE WITNESS: No. I think this was my  
24 first lawsuit --

25                   / /

1 BY MR. STAHL:

2 Q. Okay.

3 A. -- on behalf of The Center Square.

4 Q. Well, now you just qualified it. Your first  
5 lawsuit on behalf of The Center Square. Does that  
6 mean --

7 A. No. My first lawsuit, yes.

8 Q. Okay.

9 A. I'm saying it's not me personally. But yeah.  
10 I have not filed any other lawsuits, here or in  
11 previous experiences.

12 Q. There was a June 9th, 2023 meeting of the  
13 Commission for the Tennessee Rules of Practice and  
14 Procedure that was recorded and placed on YouTube.  
15 Did you watch that?

16 A. I did.

17 Q. Have you ever served as member on any state  
18 board or commission in Tennessee?

19 A. No.

20 Q. What about Chicago or, rather, Illinois?

21 A. Like -- repeat the question specifically to  
22 Chicago or Illinois.

23 Q. Have you ever served as a member on any state  
24 board or commission in Illinois?

25 A. No.

1 Q. Do you believe that there is an access to  
2 justice crisis in Tennessee?

3 A. Problem, yes. Crisis, maybe so. That's, you  
4 know -- that's subjective, I guess.

5 Q. It is subjective. And I'm just asking for  
6 your opinion. What leads you to believe that there  
7 is an access to justice problem and/or crisis in  
8 your opinion?

9 A. If you were -- I guess, in terms of the data,  
10 there's plenty of people who don't have the means to  
11 hire an attorney to represent them. That would be  
12 true in Tennessee and many states across the  
13 country. I can't unequivocally say every state but  
14 certainly that is an issue.

15 Q. Do you have any data that's Tennessee  
16 specific to support that statement?

17 A. No specific data, no.

18 Q. Have you talked with anyone who is a  
19 Tennessee resident who has expressed to you that  
20 they have trouble hiring a lawyer in Tennessee?

21 MR. DOUGHERTY: Object to the form of  
22 the question.

23 THE WITNESS: Who they personally had --  
24 repeat the question. I'm sorry.

25 / /

1 BY MR. STAHL:

2 Q. Have you ever talked with anyone who is a  
3 Tennessee resident who has expressed their  
4 difficulty in hiring a lawyer in Tennessee?

5 A. No.

6 Q. Do you know what a pro se litigant is,  
7 Mr. McCaleb?

8 A. Yes.

9 Q. Are you a pro se litigant?

10 A. No.

11 Q. In your opinion, does this suit involve the  
12 rights of pro se litigants?

13 MR. DOUGHERTY: Object to the form of  
14 the question.

15 THE WITNESS: Go ahead and answer.

16 BY MR. STAHL:

17 Q. Yes, you can answer.

18 A. Yes.

19 Q. In what way?

20 A. Pro se litigants, more than maybe other  
21 litigants who have representation, have a more  
22 difficult time understanding, accessing, et cetera,  
23 with the court system. And by opening these  
24 meetings up to the public and a journalist to cover  
25 these meetings, they have a better opportunity to

1 understand the court system.

2 Q. Have you ever spoken with any Tennessee  
3 resident who has acted as a pro se litigant in a  
4 lawsuit?

5 A. No.

6 Q. Have you ever talked to a Tennessee resident  
7 who has expressed to you their desire to attend the  
8 Tennessee Commission on Rules of Practice and  
9 Procedure?

10 A. No.

11 Q. As a journalist and as someone who you  
12 mentioned attended a conference on the First  
13 Amendment, have you read the first amendment to the  
14 Constitution?

15 A. Yes.

16 Q. Why do you think that particular amendment  
17 requires the State of Tennessee to open its Advisory  
18 Commission meetings to the public?

19 A. Well, I'm not a lawyer. I'm not a  
20 constitutional lawyer. But as a 30-year journalist,  
21 you've learned some things here and there. And when  
22 policy decisions are being made that can affect a  
23 certain body or can affect the taxpayers and voters  
24 and general public, that general public should have  
25 access to those meetings in my experience.

1 Q. Where is that found in the First Amendment?

2 A. Again, I'm not a lawyer. I'm not a  
3 constitutional lawyer.

4 Q. I understand. And I don't really want to go  
5 back and forth on this, but I'm going to keep  
6 asking. You've read the First Amendment?

7 A. Yes.

8 Q. Right?

9 A. Yes.

10 Q. What part of the First Amendment supports  
11 your claim that the State of Tennessee is required  
12 to open its Advisory Commission meeting to the  
13 public?

14 A. They have a right to petition the government  
15 to access of the government. Again, that's the best  
16 I can do on that one.

17 Q. Are you familiar with the Tennessee  
18 Administrative Office of the Courts, otherwise  
19 referred to in these pleadings as the AOC?

20 MR. DOUGHERTY: Object to the form of  
21 the question.

22 THE WITNESS: Yes. Yes. I know it as  
23 the TAOC but same thing I guess, yes.

24 BY MR. STAHL:

25 Q. Yes. That's what I'm talking about. So I'm

1 just going to ask you have you ever talked to any  
2 member of the TAOC?

3 A. No.

4 Q. We mentioned earlier that the TAOC website  
5 lists and I think you numbered 15 to 20 different  
6 commissions. Do you remember talking about that?

7 A. Yes. And that was an educated guess but yes.

8 Q. Sure. And it doesn't have to be perfect.

9 A. Yes.

10 Q. Do you have an opinion as to whether or not  
11 the Advisory Commission meetings are meaningfully  
12 different from the work being done in any of those  
13 other commissions?

14 MR. DOUGHERTY: I object to the form of  
15 the question.

16 THE WITNESS: Well, I've watched one of  
17 these Advisory Commission meetings. I have not  
18 watched any of the other ones, so I can't speak for  
19 the other ones.

20 BY MR. STAHL:

21 Q. If you learned that those other commission  
22 meetings were not open to the public, would you  
23 expect to file suit under the First Amendment to  
24 have those meetings open as well?

25 A. I guess it would depend on what the

1 committees are supposed to do. If they are setting  
2 policy or recommending policy for the courts to  
3 follow or for potential legislation then yes.

4 Q. How would you know if a committee was  
5 creating or recommending policy?

6 A. Well, I guess by digging into it, by asking  
7 questions. If memory serves, these committees in  
8 Tennessee mirror or very closely mirror the same  
9 committees in the federal judiciary. And looking  
10 into the -- I haven't done this so I can't speak to  
11 it, but the mirrored committee meeting at the  
12 federal level and its similar name at the state  
13 level, I guess you could assume, we don't like to  
14 assume, that it's doing something similar that the  
15 Federal Judiciary Committee has done.

16 Q. Okay. So I think we walked through this a  
17 little bit earlier. But I asked you what you had  
18 done to investigate the Tennessee Rules of Practice  
19 and Procedure Commission prior to filing suit to  
20 have those meetings open to the public.

21 And if I'm right, you hadn't attended any of  
22 those; you hadn't watched any of those; so how did  
23 you know that that committee was creating policy or  
24 recommending policy that would require that  
25 committee to be open to the public?

MR. DOUGHERTY: Object to the form of the question.

THE WITNESS: The Advisory Commission, the Bench Bar Commission, is what you're referring to?

BY MR. STAHL:

Q. Yes.

A. I know what commission you're talking about.  
Please ask me the question again.

Q. Well, I'm trying to understand your earlier statement that you wouldn't necessarily file suit if you learn that a commission was not open to the public unless that commission was creating policy or recommending policy. And I'm trying to understand how you learned or what led you to believe that the Tennessee Commission on Rules of Practice and Procedure satisfied those terms, that it created policy or advised on policy.

A. I think just by this committee's name itself.

Q. So if a committee has a name that you think indicates it creates policy or recommends policy, you automatically believe that that meeting should be open to the public under the First Amendment?

A. Yes.

Q. Do you know if the federal analog to the

1 Tennessee Rules of Practice and Procedure, the  
2 Federal Rules Advisory Commission, live stream their  
3 meetings?

4 A. If you look under the federal version of the  
5 Tennessee Commission.

6 Q. Yes.

7 A. I guess I honestly, I'm not positive, but I  
8 think they do. But that's -- I have not watched  
9 one, a live committee meeting of the Federal Policy  
10 Committee.

11 Q. Have you ever attempted to watch one, done a  
12 search for it on the YouTube or on the federal  
13 websites?

14 A. I did do searches on the federal websites.  
15 And I seem to recall -- I can't say specifically  
16 that they were live webcasts but I do recall seeing  
17 some either YouTube video or some video of the  
18 conference meetings.

19 Q. If you were to learn that the Federal  
20 Advisory Commission doesn't live stream their  
21 meetings but records them and puts them on a  
22 platform such as YouTube after the fact, would that  
23 change your opinion as to whether the Tennessee  
24 Commission on Rules of Practice and Procedure could  
25 do the same?

MR. DOUGHERTY: Object to the form of the question.

THE WITNESS: No.

BY MR. STAHL:

Q. So if the Federal Advisory Commission were electronically recording their meetings and putting them on a platform after the fact, not live streaming them, would you file suit under the First Amendment to have them open their meeting to the public?

MR. DOUGHERTY: Object to the form of the question.

THE WITNESS: I'd think long and hard about it, yes.

BY MR. STAHL:

Q. Did you review your expert's opinion in this case, Mr. Barton?

A. I was on the live stream of his deposition. I did get distracted at times, so I can't say I heard every single word from start to finish, but I heard large chunks of it.

Q. There was a portion, a statement made in that opinion, that said the Tennessee Rules of Procedure have a direct effect on every citizen in the state of Tennessee. Do you agree with that statement?

1 A. I'm sorry, I'm going to have to ask you to  
2 repeat it one more time.

3 Q. Mr. Barton's opinion made a statement that  
4 the Tennessee Rules of Procedure have a direct  
5 effect on every citizen in the state of Tennessee  
6 and I was just wondering if you agree with that  
7 statement?

8 A. I can't say one way or the other. I think it  
9 has a direct effect on many people in the state of  
10 Tennessee. I would need to probably hear arguments  
11 for and against to say whether or not I agreed with  
12 that 100 percent.

13 Q. Do you believe that the Tennessee Rules of  
14 Procedure affect you as a citizen of Illinois?

15 A. Only insomuch as governments close meetings,  
16 if no one challenge that, more governments will  
17 close meetings. And so it could yes, indirectly,  
18 yes.

19 Q. Well, I don't mean the meetings. I mean the  
20 actual Tennessee Rules of Procedure for filing a  
21 suit, if you're a citizen of Tennessee and you're  
22 involved in the court system, the Tennessee Rules of  
23 Procedure would apply to you.

24 But would they apply to you, Mr. McCaleb, as  
25 a citizen of Illinois?

1 A. Not that I'm aware of.  
2 Q. Who is John Styf? And I may not be saying  
3 that last name right, S-t-y-f.

4 A. Styf.

5 Q. Styf. Who is Mr. John Styf?

6 A. He is a reporter for The Center Square.

7 Q. How do you know him?

8 A. He is an employee of mine.

9 Q. Does he report to you?

10 A. Up through the chain. I'm not his direct  
11 supervisor.

12 Q. Have you ever had conversations with him?

13 A. Yes. I'm in meetings every day with him and  
14 the whole staff, yes.

15 Q. Have you ever discussed this case with him?

16 A. I made him aware of the case, and I made him  
17 aware of the court's ruling back in March.

18 Q. So to your best recollection, has he written  
19 anything about this case?

20 A. Yes.

21 Q. Did you provide any editorial comment about  
22 that?

23 MR. DOUGHERTY: Object to the form of  
24 the question.

25 THE WITNESS: I provided a statement

1 through -- I think it was through Liberty Justice  
2 Center.

3 BY MR. STAHL:

4 Q. So prior to his publishing anything about  
5 this case, you wouldn't have edited anything that he  
6 would have written?

7 A. About this case?

8 Q. Yes.

9 A. No. I stepped aside. I need -- because I am  
10 part of the case, I needed to recuse myself from the  
11 editing process.

12 Q. Okay. Do you know if Mr. Styf lives in  
13 Tennessee?

14 A. He does not.

15 Q. Who is J.D. Davidson?

16 A. J.D. Davidson is John Styf's direct  
17 supervisor.

18 Q. Does he live in Tennessee?

19 A. No.

20 Q. Are you aware of anything that Mr. Davidson  
21 might have written about this case?

22 A. Not aware. I don't think he has, but I can't  
23 say that for sure.

24 Q. Who is Steve Wilson?

25 A. Steve Wilson was John Styf's previous

1 supervisor.

2 Q. So am I to assume that Mr. Wilson doesn't  
3 work at The Center Square anymore?

4 A. No. He does. We went through a restructure.  
5 We went through a restructure.

6 Q. Okay. Have you ever talked to Steve Wilson  
7 about this case?

8 A. Only to confirm that he was, in fact, John  
9 Styf's supervisor when the lawsuit was filed.

10 Q. Okay. Is he a Tennessee citizen?

11 A. No.

12 Q. Has Mr. Wilson written about the case that  
13 you're aware of?

14 A. Not that I'm aware of. I don't think so.

15 Q. Does Mr. Styf at your direction -- has he  
16 ever traveled to Tennessee to write or research a  
17 story?

18 MR. DOUGHERTY: Object to the form of  
19 the question.

20 THE WITNESS: I don't know the answer to  
21 that question.

22 BY MR. STAHL:

23 Q. So is it possible that you would have  
24 directed him --

25 A. I'm sorry. I didn't -- no. No, I have not.

1 I did not direct him.

2 Q. Okay. Just one more question I think,

3 Mr. McCaleb.

4 Have you ever been convicted of a felony?

5 A. No.

6 MR. STAHL: Okay. Buck, why don't you  
7 go ahead and if I've got anything else I'll do it at  
8 the end, but I think I'm done for now.

9 MR. DOUGHERTY: Okay. Thank you, Mike.

10

11 EXAMINATION

12 QUESTIONS BY MR. DOUGHERTY:

13 Q. Mr. McCaleb, there was a line of questioning  
14 that Mr. Stahl asked you about Advisory Commission  
15 being recorded versus live stream. Do you recall  
16 that line of questioning?

17 A. Yes.

18 Q. Would you assign any of your reporters to  
19 cover Advisory Commission meetings if they were open  
20 to the public?

21 A. Yes, particularly in this case.

22 Q. Is it important as part of your lawsuit that  
23 meetings be open contemporaneously to the public  
24 when they are actually occurring?

25 A. Yes.

1 Q. And then just to follow up, you talked about  
2 at the end there on some of the questioning when  
3 Mr. Styf wrote about this case. Do you recall that?

4 A. Yes, this case, this lawsuit. Yes.

5 Q. Mr. Stahl asked you some questions. And so  
6 the comments that you did give to Mr. Styf about  
7 this case, were they in your capacity as the  
8 plaintiff?

9 A. Yes.

10 Q. And when you say you felt you needed to  
11 recuse yourself, by that did you mean you didn't  
12 then give a comment and then have editorial control  
13 over the story itself; is that correct?

14 A. I did not. It was the reporters and the  
15 reporters' editors' decision whether to include the  
16 statement, the full statement, partial statement,  
17 not include it at all.

18 Q. Is that kind of part of the normal  
19 journalistic code of ethics --

20 A. Yes.

21 Q. -- since you're pretty involved in the story  
22 that your news agency is reporting on, you kind of  
23 stay out of the editorial process?

24 A. Yes.

25 MR. DOUGHERTY: I don't have anything

1 further, Mike.

2

3 EXAMINATION

4 QUESTIONS BY MR. STAHL:

5 Q. Just one more question, Mr. McCaleb.

6 Have you ever been hired to give an expert  
7 opinion for any reason in any lawsuit?

8 A. No.

9 MR. STAHL: Well, that's all I have.

10 MR. DOUGHERTY: All right. I guess we  
11 can go off the record. We'll take a copy of the  
12 transcript whenever you can get it. And really  
13 appreciate you-all's help for covering these.

14 \* \* \*

15 THE REPORTER: Mr. Stahl, you are  
16 ordering this transcript?

17 MR. STAHL: Yes, please.

18 THE REPORTER: Reading and signing?

19 MR. DOUGHERTY: We'll waive the signing.  
20 You have an opportunity to look through your  
21 transcript and then sign if everything is fine, but  
22 I think it's fine to waive.

23 THE WITNESS: I'm okay with waiving.

24 FURTHER DEPONENT SAITH NOT

25 (Proceedings concluded at 1:01 p.m.)

**REPORTER'S CERTIFICATE**

**STATE OF TENNESSEE**

## COUNTY OF DAVIDSON

I, Deborah H. Honeycutt, Licensed Court  
with offices in Hermitage, Tennessee,  
certify that I reported the foregoing  
conference deposition of DAN McCaleb by  
dictation to the best of my skills and  
, and thereafter the same was reduced to  
written form by me. I am not related to any of  
the parties named herein, nor their counsel, and  
have no interest, financial or otherwise, in the  
proceedings.

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My Notary Public Commission Expires: 07/09/24  
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